

No. 9/5/884-6Lab./458.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s General Manager, Haryana Roadways, Faridabad (ii) State Transport Controller, Haryana, Chandigarh

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 12 of 1984

between

SHRI ATTAM PARKASH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S. GENERAL
MANAGER, HARYANA ROADWAYS, FARIDABAD, (ii) STATE TRANSPORT CONTROLLER
HARYANA, CHANDIGARH

Present.—Shri R.C. Sharma for the workman.

Shri Jagbir Singh for the respondent management.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana vide his order No. ID/FD/1/149-83/4902, dated 2nd February, 1984 under Section 10 (i) (c) of the Industrial Disputes Act, 1947 for adjudication of the industrial dispute existing between Shri Attam Parakash, workman and the respondent-management of M/s. General Manager, Haryana, Roadways, Faridabad, (ii) State Transport Controller, Haryana, Faridabad. The term of the reference was :—

Whether the termination of service of Shri Attam Parkash was justified and in order? If not to what relief is he entitled?

According to the claim statement, the claimant passed in Motor Mechanic Trade and joined the respondent as apprentice w.e.f. 5th February, 1980. On 18th June, 1981 he was transferred to Faridabad depot. He was paid upto 4/82 and he completed his apprenticeship training. After that he continued the services as full fledged mechanic and his name was duly entered in the attendance register. He was allowed duties by issuing slips but he was not paid salary. Hence the claimant issued a notice. After receipt of this notice, the claimant was not allowed to enter the workshop w.e.f. 27th June, 1983. The claimant wrote letter on 4th July, 1983. No reply was received by him. The claimant served a demand notice on 27th July, 1983. None appeared before the Conciliation Officer. Hence this reference.

In the written statement, the management has contended that the claimant was appointed as apprentice upto 4th February, 1983, vide letter dated 5th February, 1980. He was not full fledged mechanic. He joined at Faridabad after his transfer from Gurgaon. The service record of the claimant was not received and the workman was asked to produce the appointment letter vide letter dated 16th November, 1982 but the claimant knowingly did not submitted the same. Reminder was also issued to him. The claimant had not replied the letter and worked as apprentice till 27th June, 1983 though his appointment was upto 4th February, 1983, but he worked upto 27th May, 1983 in an un-authorised manner without any valid order and kept the management in dark. He was appointed as apprentice and he was paid stipend upto 6/82. The management is ready to pay the stipend upto 4th February, 1983. The demand notice was not replied due to none availability of record.

The claimant filed the rejoinder asserting his averments in the claim statement. The parties contested the reference on the following issue:—

1. As per reference?

I have heard the rep. of both the parties and have gone through the entire evidence produced by the parties, in the file. My findings on the issue is as under :—

Issue No. 1

MW-1—Shri Sube Singh has proved the appointment letter Ex. M-1. He was transferred to Faridabad on 5th February, 1980. His period of apprenticeship ended on 4th February, 1983. but the claimant worked upto 27th June, 1983. Appointment letter was issued to him on 4th February, 1980. It is stated that the management is ready to pay him allowance upto 4th February, 1983. I have perused the appointment letter Ex. M-1, in which it is clearly mentioned that he was appointed on 4th February, 1980 as apprentice and his stipend has also been mentioned for each year. It is therefore clear that he was appointed upto 5th February, 1983 for a period of three years. But he continued working upto 27th June, 1983. He was not issued any appointment letter. Hence he was not appointed afresh as mechanic. It has been mentioned under Section 7(i) that the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training. Hence in the present case the apprentice period ended on 4th February, 1983. He was not appointed after that though he had been working in the workshop. Hence it cannot be said that he was appointed on regular job.

It is contended by the workman that apprentice is also a workman as defined under section 2-S of the Industrial Disputes Act, 1947 but no benefits under section 25-F is to be paid to the apprentice as his services have been terminated as per contract. The services of the workman were terminated on 4th February, 1983 as per contract, though he continued working with the respondent upto 27th June, 1983 because the service record of the claimant was not received by the respondent. Even if it is contended that he was appointed afresh in that case he has not completed 240 days within previous one year. Hence he is not entitled to any benefit under section 25-F of the I.D. Act. In that case also his services could be terminated without paying any compensation. In view of appointment letter Ex. M-1, the contention of the claimant could not be accepted as correct.

In view of the discussions I find that the services of the claimant were validly terminated on 27th June, 1983. He is, therefore, not entitled to any relief. The award is given accordingly.

Dated 18th December, 1984.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endst. No. 139, dated 16th January, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the I.D. Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

The 24th January, 1985

No. 9/5/84-6Lab/522.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Joy B Industries, Plot No. 162, Sector 24, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 444/1982

between

SHRI BAL KISHAN WORKMAN AND THE MANAGEMENT OF M/S JOY B INDUSTRIES,
PLOT NO. 162, SECTOR 24, FARIDABAD

Present :

Shri Darshan Singh for the workman.
Shri R.C. Sharma for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Bal Kishan workman and the Management of M/s Joy B Industries, Plot No. 162, Sector 24, Faridabad, to this Tribunal, for adjudication : —

Whether the termination of service of Shri Bal Kishan was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to both the parties. The claimant in his claim statement dated 31st December, 1982, alleged that he was permanent workman working as helper with effect from 1st January, 1981 at Rs. 340 per month and that the management terminated his services illegally without any notice or benefits under section 25-F of the Industrial Disputes Act, 1947. It was then alleged that the workman was not allowed to join duty with effect from 13th August, 1982. It was, therefore, prayed that the award be passed in his favour.

2. The Management in their written statement dated 13th January, 1983, pleaded that they were carrying on business of foundry, thereby casting different types of parts for different industries like M/s Escorts Limited and Eicher Tractors. It was then pleaded that there was general crises in the industry which resulted in reduction of

orders and supplies to the customers and that due to compelling circumstances, the management retrenched 55 workers of different categories after displaying the seniority notice according to the rules. It was further pleaded that the claimant joined service on 1st June, 1981 and his last pay was Rs. 340 per month and he was offered a total sum of Rs. 510 by way of retrenchment compensation and notice pay, which amount was sent by bank draft as the claimant was not on duty. It was also pleaded that all the formalities regarding retrenchment were duly completed and as such the services of the workman were terminated in a legal manner.

3. The claimant in his rejoinder dated 9th February, 1983 reiterated the pleas taken in the claim petition.

4. On the pleadings of the parties, the following issue was framed on 9th February, 1983:—

(1) Whether the termination of service of Shri Bal Kishan was justified and in order? If not, to what relief is he entitled? OPM

5. The management has examined one witness and documents. Ex. M-1 to M-7 have been tendered into evidence. The workman appeared in the witness box as WW-1. After going through the evidence and hearing both the parties, my finding on the above issue is as under:—

Issue No. 6. The management has examined MW-1 Shri Subhash Sood its Manager, who deposed that the business of foundry was being carried on in their factory and they manufactured the parts of the tractor of M/s Escorts Tractors and Ford Industries. He further stated that there was a complete slump in the market since 1st January, 1982 due to which they had no adequate work for the workmen. He further stated that they waited upto August, 1982, but they did not receive any order due to which they retrenched the workman and that the seniority list of the workman Ex. M-1 was pasted by them. He further stated that the workman was on leave upto 8th August, 1982 and thereafter he did not turn up. He further stated that Ex. M-2 was the retrenchment letter and that the amount due to the workman as wages and compensation was sent by registered A.D. letter, copy Ex. M-3 and that the draft for Rs. 510 was enclosed with that letter. He also stated that Ex. M-4 was the postal receipt of that letter and that the draft had been encashed by the workman. He then stated that if the workman were present on 13th August, 1982 the management would have paid the amount in cash to him. He further stated that 55 workmen were retrenched by them on 13th August, 1982 whose list was Ex. M-5 and that form 'P' Ex. M-6 was sent to the Government. Ex. M-7 is photo-stat copy of the wage slip issued to the workman.

7. Shri Bal Kishan workman, while appearing as WW-1 stated that he was employed by the respondent about 21 years ago and that his services were terminated on 13th August, 1982. He further stated that he was on medical leave due to accident, while working in the factory and that no chargesheet or any letter was given to him nor any compensation or notice pay was paid to him. He further stated that he was unemployed.

8. A perusal of the above evidence would show that according to the respondent 55 workmen including the claimant were retrenched by the Management on 13th August, 1982 due to slump in the market as mentioned in the letter Ex. M-2. The list of 55 retrenched employees is Ex. M-5 and the name of the claimant appears at serial No. 48 in that list. The seniority list of all the workmen is Ex. M-1 and the name of the claimant finds mentioned in that list at serial No. 80, which has displayed by the management. Ex. M-6 is the copy of form 'P' which was sent to the Government. The letter Ex. M-3, however, shows that the compensation and notice pay amounting to Rs. 510 were sent to the claimant, —vide postal receipt Ex. M-4 on 21st August, 1982.

9. It was argued by the representative of the workman that compensation notice pay was sent to the workman after 9 days and consequently the provision of section 25-F of the Industrial Disputes Act, 1947 were not complied with and as such the claimant was entitled to reinstatement with full back wages. The representative of the Management argued that they waited for the workman and since he did not turn up, the compensation and notice pay was sent to him by draft on 21st August, 1982. In the present case, retrenchment letter Ex. M-2 was prepared on 13th August, 1982, but it was sent on 21st August, 1982 along with the letter Ex. M-3 and draft for Rs. 510 which was also sent on that date by registered post, —vide postal receipt Ex. M-4. Since the workman was not present on 13th August, 1982, therefore, the amount of compensation and notice pay should have been sent to him along with retrenchment letter on that very date. In the present case, the workman had not refused to receive the amount on 13th August, 1982 because he was not present on that date. In the ruling reported as *M/s Kanti Weekly Petitioner, versus D.D. Gupta and others*, 1984 Lab I.C. N.O.C. 168 (Delhi), it is laid down that tender or offer of compensation must be done at the time of retrenchment and that compensation paid a day after the retrenchment, was illegal and that the reinstatement of the employee was proper course. This ruling fully applies to the facts of the present case because the compensation and notice pay were sent to the claimant after nine days inasmuch as the same should have been sent on 13th August, 1982, but were actually sent on 21st August, 1982. Consequently, the provisions of section 25-F of the Industrial Disputes Act, 1947, have not been complied with by the respondent in the present case and thus the termination of the services of the claimant was neither justified nor proper and as such, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 17th January, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 75, dated the 18th January, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/525.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Usha Spinning & Weaving Mills Ltd., Mathura Road, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 43/1979

between

SHRI DEVI DYAL, WORKMAN AND THE MANAGEMENT OF M/S USHA SPINNING AND WEAVING
MILLS, LTD., MATHURA ROAD, FARIDABAD

Present :

Shri M.K. Bhandari, for the workman.

None for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Devi Dyal Workman and the Management of M/s Usha Spinning & Weaving Mills, Ltd., Mathura Road, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of services of Shri Devi Dyal was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties and they filed pleadings on 23rd October, 1981, it was held by my learned predecessor that the workman was not given full opportunity by the Enquiry Officer to associate him in the enquiry and to lead his defence and consequently, the enquiry was neither fair nor proper and the case was fixed for evidence of the parties on merit. It may be mentioned that the case was fixed for evidence of the management, but none appeared on their behalf and as such *ex parte* proceedings were ordered against them. On 16th January, 1985, Shri Devi Dyal claimant appeared as WW-1 and stated that he was employed by the respondent in the year 1974 as workman and was promoted as Badli Jobber and was confirmed. He further stated that he was a member of the union of their factory and that Shri Antony his Khatta Incharge, borrowed Rs. 500 from the claimant but he did not wish to return the said amount and that when the claimant demanded the amount of loan from him, Shri Antony threatened him with serious consequences. He further stated that on 21st June, 1976, the claimant could not come on the night duty and when he came for duty on 22nd June, 1976 at 11.00 p.m. his attendance card was taken and the chargesheet was given to him which was replied by him,—*vide* copy Exhibit W-1. He further stated that 26th June, 1976, was the date fixed for enquiry and when he came to the factory gate on that date at 12.00 noon, some bad characters were deputed by the company who started beating the claimant and snatched Rs. 545 from him and his wrist watch was also removed by them. He further stated that he went to the police station but his report was not recorded during the emergency days and was threatened and came back, when he reported the matter to Shri Teeka Ram, President of the Union, and gave the application Exhibit W-2 to him which was signed by him. He further stated that he wrote letters Exhibit W-3 and W-4 in that respect. He then stated that no enquiry was held against him, but on the other hand, he was turned out after being given beating and was not allowed to participate in the enquiry proceedings. He further stated that no other date was given to him by the enquiry officer and that his services were terminated in an illegal manner. He then stated that he was unemployed since then and was willing to work in the respondent factory and that his back wages be given to him.

3. *Ex parte* testimony of Shri Devi Dyal (WW-1) shows that no enquiry was held in his presence because he was given beating at the gate of the factory and was not allowed to participate in the enquiry and that no further date was communicated to him. He has thus led *ex parte* evidence to show that if any enquiry was held by

the management behind his back, the same was neither fair nor proper. His testimony goes to show that the termination of services was neither justified nor proper and that the provisions of Section 25-F of the Industrial Disputes Act, 1947 were not complied with by the respondent. Consequently, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 16th January, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 78, dated the 18th January, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/584-6Lab/529.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Escorts (M.S.D.) Employees Mutual Assistance Society, 19/6, Mathura Road, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 318/1983

between

SHRI VASDEV BHATIA WORKMAN AND THE MANAGEMENT OF M/S ESCORTS (M.S.D.)
EMPLOYEES MUTUAL ASSISTANCE SOCIETY, 19/6, MATHURA ROAD, FARIDABAD

Present :

Shri R. L. Sharma, for the workman.
Shri R. C. Sharma, for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Vasdev Bhatia, workman and the Management of M/s Escorts (M.S.D.) Employees Mutual Assistance Society, 19/6, Mathura Road, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of service of Shri Vasdev Bhatia was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement dated 24th April, 1984, alleged that he was employed by the respondent, but his services were terminated without any prior notice nor any enquiry was held against him and as such he was entitled to reinstatement with full back wages.

3. The respondent management in its written statement dated 7th May, 1984, pleaded that the society was a voluntary organisation and had been floated by the employees of Escorts Ltd. and other establishments having dealings with M/s Escorts Limited and that any officer or ordinary worker can become a member of this Society and for that purpose he had to pay an unfixed amount each month. It was further pleaded that out of those collections, the Society advanced money to the needy employees on the occasions of marriage of their family members at nominal rate of interest and that the amount was deducted from the salary. It was further pleaded that the worker had option either to continue membership or to stop at his own will and that one of the employees knowing accounts was entrusted with the job of writing books maintaining accounts without any remunerations. It was further pleaded that the Society did not employ any employee and as such did not fall within the definition of Industry. It was denied that the claimant was the employee of the respondent Society. Since there was no relation ship of employer and employee between the parties, therefore, the question of termination of service by the respondent society did not arise.

4. The claimant in his replication, dated 14th May, 1984, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 22nd May, 1984 :—

- (1) Whether there was no relationship of employees and employer between the parties as pleaded ? OPM
- (2) Whether the respondent Society does not employ any employee and as such is not covered by the definition of industry ? If so, to what effect? OPM
- (3) Whether the termination of service of Shri Vasdev Bhatia was justified and in order ? If not, to what relief is he entitled ?

6. The Management has examined one witness and the documents, Exhibit M-1 to M-10 have been tendered into evidence. The workman appeared in the witness box and documents Exhibit W-1 to W-5 have been tendered into evidence. After going through the evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

Issue No. 1 :

7. The respondent Society have examined Shri Kewal Krishan Sahni, who stated that he was working as Finance Manager in Escorts (M.S.D.), Faridabad. He further stated that he was Honorary Administrator of the respondent Society, which was a voluntary organisation of Escorts M.S.D. Employees and was formed by the employees themselves and that object of the Society was to give financial aid to needy workmen when they were in distress. He further stated that the employees of Escorts M.S.D. contributed the amount which was disbursed by this Society to needy workers and that membership fee was Re. 1. He further stated that the Society had not employed any employee and that no driver had been employed by this Society. He then stated that Shri Vasdev Bhatia claimant took a loan from the Society and executed the receipt,—*vide* documents Ex. M-1 and M-2. He further stated that the claimant was the employee of Escorts Welfare Fund and was the Bus Driver. The documents produced in conciliation proceedings Ex. M-3 to M-5 have been proved by this witness. He further stated that the claimant was not an employee of the Society. The documents, Ex. M-6 to M-10 have been proved by this witness.

8. The claimant Shri Vasdev Bhatia appeared as WW-1 and stated that he was working in Escorts since 13th January, 1980 and worked there till 7th November, 1982. He further stated that he demanded over time allowance due to which he was not allowed to enter the factory in the second plant. He also stated that Shri P.C. Aggarwal, Personnel Manager used to allot duty to the claimant. He proved duty programmes Ex. W-1 to W-5. He further stated that he was employed by Shri P.C. Aggarwal and Shri Kewal Krishan Sahni and was also turned out by them.

9. A perusal of the above evidence would show that Shri Kewal Krishan Sahni clearly deposed that respondent Society was a voluntary organisation of the employees with the object of advancing loan to needy employees and that no employee was employed by this Society, but accounts were being maintained by an employee of Escorts (M.S.D.) without getting remuneration and that the Society was not a registered one and was working on honorary basis. He further stated that the claimant was employed by Escorts Welfare Fund and not by the respondent Society. The documents Ex. M-7, M-8 and M-9 show that the letters were addressed to the claimant by Escorts Employees Welfare Fund. Since this Society used to advance loans to the needy employees, therefore, the claimant also got loan from this Society,—*vide* documents Ex. M-1 and M-2. The oral as well as documentary evidence led by the respondent, therefore, shows that the claimant was not an employee of the respondent Society, but on the other hand, he was an employee of Escorts Welfare Fund, Faridabad. The testimony of WW-1 Shri Vasdev Bhatia claimant is to the effect that he was working in Escorts. In cross examination, he stated that he used to drive the buses belonging to Escorts Ltd. He further stated that he did not know if he was the employee of the respondent Society. He further stated that he was not the employee of Escorts Employees Welfare Fund but was the employee of Escorts. Consequently in his cross-examination, claimant did not take a firm stand that he was the employee of the respondent Society, but on the other hand, stated that he did not know if he was the employee of the said Society. The documents Ex. W-1, W-2, W-4 and W-5 produced by him contain bus routes, while Ex. W-3 is the circular regarding holiday to be observed which were issued by the Escorts Ltd., and not by the respondent. Consequently, these documents do not help the claimant because no documentary evidence has been produced by him that he was appointed by the respondent Society or that he was working in that Society. Consequently, the respondent society has succeeded in proving that there is no relationship of employer and employee between the parties. The issue is decided accordingly in favour of the respondent Society.

Issue No. 2 :

10. As already discussed in issue No. 1 above, the respondent is a voluntary organisation and its object is to advance loan to the needy employees and that accounts are being maintained by an employee of the

Escorts M.S.D., who does not receive any remuneration for his service. Likewise, Shri Kewal Krishan Sahni (MW-1) stated that he was Honorary Administrator of this Society. Consequently this Society does not employ any employee. Keeping in view the object of this unregistered society, it does not fall in the definition of industry given in Section 2(j) of the Industrial Disputes Act, 1947 because no systematic activity is being carried on between any employer and his workmen in this Society, especially when this Society does not employ any person on remuneration basis. It is thus held that respondent Society is not covered by the definition of industry. The issue is decided accordingly in favour of the respondent Society.

Issue No. 3:

11. Since there is no relationship of the employer and employee between the parties, therefore, the respondent Society has not terminated the services of the claimant and no relief can be given against Escorts Employees Welfare Fund because the said organisation is not a party in this reference and as such the claimant is not entitled to any relief from the respondent society. The award is passed accordingly.

Dated the 18th January, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 82, dated 18th January, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 25th January, 1985

No. 9/5/84-61.ab/585.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workers and the management of M/s. Radhika Rubber Products P. Ltd., Plot No. 33, Sector 6, Faridabad:—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 105/1983

between

SHRI MANGAL PARSHAD WORKMAN AND THE MANAGEMENT OF M/S RADHIKA RUBBER PRODUCTS PRIVATE LIMITED, PLOT NO. 33, SECTOR 6, FARIDABAD

Present.—

Shri Darshan Singh, for the workman.
Shri R. C. Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Mangal Parshad, workman and the management of M/s. Radhika Rubber Products P. Ltd., Plot No. 33, Sector 6, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Mangal Parshad was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated 30th March, 1983 alleged that he was working in the respondent company since 26th April, 1981 as helper at Rs. 340.50 Paise per month but he was not allowed to join duty with effect from 9th November, 1982. It was further alleged that no chargesheet was given nor any enquiry was held against him. It was further alleged that no notice pay or retrenchment compensation was paid to him. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The respondent factory in their written statement dated 15th April, 1983, pleaded that the claimant worked in the factory intermittently and that his last employment was from 1st July, 1982 and that his services were terminated on 9th September, 1982. It was then alleged that the details of service rendered by the claimant was as under;—

(i) 1st July, 1981 to 30th September, 1981.

(ii) 1st November, 1981 to 30th April, 1982.

(iii) 1st July, 1982 to 9th September, 1982.

It was then pleaded that the services of the claimant were terminated because he was a temporary employee and as such no notice pay or retrenchment compensation was payable to him.

4. The claimant in his rejoinder dated 14th May, 1984, pleaded that the management had admitted in the written statement that the claimant had worked intermittently since 1st July, 1981 which showed that the management had been striking off name of the workman from the roll so that he could not become permanent. It was averred that the claimant was working since 26th April, 1981 and that the termination of his services was illegal.

5. On the pleadings of the parties, the following issue was framed :—

Whether the termination of service of Shri Mangal Parshad was justified and in order? If not, to what relief is he entitled?

6. It may be mentioned that management has examined one witness and document Ex. M-1 has been tendered into evidence. The workman has himself appeared in the witness box and documents Ex. W-1 and W-2 have been tendered into evidence. After going through the entire evidence and hearing the representative of both the parties, my findings on the above issue is as under :—

Issue No. 1:

7. The Management have examined MW-1 Shri Mohan Time Office/Store Clerk in the respondent company, who stated that according to the entries in the payment of wages register and attendance register, the claimant joined services in July, 1981 and he worked for 3 months and that he was not in service of the respondent since October, 1981 but he joined in November 1981 and remained on duty upto April, 1982. He further stated that the claimant did not work in the months of May and June, 1982 and he again joined service in July, 1982 when he proceeded on leave in September, 1982 and did not come back when his services were terminated. He further stated that Ex. M-1 was the chart showing attendance of the claimant.

8. Shri Mangal Parshad claimant (WW-1) stated that he was employed by the respondent factory on 26th April, 1981 as a helper and that Ex. W-1 and W-2 were the photostat copies of the attendance cards given to him during the months of November and December, 1981. He further stated that he was not allowed to join duty on 9th November, 1982 when no letter was issued by the management nor any chargesheet was given to him and that no amount regarding wages, compensation was paid to him. He further stated that he was a permanent employee of the respondent and that since the termination of his service, he was unemployed and was willing to join duty.

9. A perusal of the above evidence would show that MW-1 Shri Mohan has deposed that claimant worked in the respondent factory intermittently with effect from 1st July, 1981 as under :—

(i) 1st July, 1981 to 30th September, 1981.

(ii) 1st November, 1981 to 30th April, 1982.

(iii) 1st July, 1982 to 9th September, 1982.

Chart Ex. M-1 produced by him shows the period on which the claimant remained on duty. According to this chart he was present on 240 days. He further stated that claimant proceeded on leave in September, 1982 but he did not come back. No leave application of the claimant has been produced by the respondent to show that claimant proceeded on leave in September, 1982 and that any letter was written to him to join duty. Shri Mangal Parshad claimant (WW-1) on the other hand, stated that he remained in regular employment of the respondent factory with effect from 26th April, 1981 but he was not allowed to join duty with effect from 9th November, 1982. The respondent have shown breaks in the service of the claimant as per details given above. No document has been produced by the management to show that the work load did not justify the continuance of the claimant during this break period nor any document has been produced to show that the claimant was the junior most person. If these notional breaks were not shown the claimant must have served exceeding 240 days in a year. Consequently the respondent has not shown any justification for these notional breaks. Chart Ex. M-1 produced by the company therefore does not help them. Reliance was placed on the

ruling reported as **Lalappa Lingappa and others and Laxmi Vishnu Textile Mills, Sholapur, 1981-I-LLJ Page 308** in which it was held that the permanent employees were not entitled to payment of gratuity for the years they remained without leave and had actually worked less than 240 days in a year. This ruling is distinguishable on facts because the management has not produced any document to show that the claimant remained absent without leave in September, 1982 but on the other hand, the Management has not been able to show any justification regarding the notional breaks in service of the claimant. On behalf of the claimant, reliance has been placed on the ruling reported as **The Kapurthala Central Co-operative Bank Ltd. Kapurthala versus The Presiding Officer, Labour Court, Jullundur and others, 1984 Lab.I.C. 974**, in which it is laid down that where the services of the workman were terminated on their rendering 230 days services with notional breaks, when the work of the workmen was satisfactory and other had been recruited in their place, it was an instance of unfair labour practice and as such the workmen were entitled to reinstatement with full back wages. This ruling fully applies to the facts of the present case because the respondent has not been able to show its justification for the notional breaks in the services of the claimant and as such the inference that can be drawn is that the claimant was in service for more than 240 days in a year and has thus been deprived of his rights under section 25-F of the Industrial Disputes Act, 1947 inasmuch as no notice pay or compensation was paid to him. The termination of services of the claimant was therefore, neither proper nor justified and as such the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 21st January, 1985.

Endst No. 89, dated 21st January, 1985.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 22nd February, 1985

No. 9/5/84-6Lab/802.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Naster Pharmaceuticals (P) Ltd., W.H. 2, N. I. T., Faridabad :—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 33 of 1982

between

SMT. SABITA ADHIKARI, WORKMAN AND THE MANAGEMENT OF M/S. NASTER
PHARMACEUTICALS (P) LTD., N. H. 2, N.I.T., FARIDABAD

Present—

Shri Darshan Singh, for the workman.

Shri R. C. Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred to following dispute between Smt. Sabita Adhikari, Workman and the Management of M/s. Naster Pharmaceutical (P) Ltd., N. H. 2, N.I.T., Faridabad, to this Tribunal, for adjudication :—

Whether the termination of services of Smt. Sabita Adhikari was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The workman in her claim statement dated the 15th March, 1982 alleged that she was working in the factory as helper since 14th August, 1980 at Rs. 272 per month, but

the Management terminated her services without serving any charge-sheet and payment of notice pay/retranchment compensation with effect from 13th May, 1981 in an illegal manner. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The respondent-company in their written statement, dated the 1st April, 1982, pleaded that the claimant submitted her resignation on 10th May, 1981, which was accepted with effect from 13th May, 1981 and as such, the claimant was not entitled to reinstatement etc.

4. The claimant in her rejoinder, dated the 30th April, 1982 reiterated the pleas taken in the claim-statement and averred that her resignation was taken under threat along with other workmen. She further stated that strike took place in the factory on this issue when two workmen were taken back on duty, while the remaining two workmen (including the claimant) were not taken back on duty.

5. On the pleadings of the parties, the following issues were framed on 28th May, 1982 :—

- (1) Whether the workman has resigned of her own accord ? OPM
- (2) Whether the termination of service of Smt. Sabita Adhikari was justified and in order ? If not, to what relief is she entitled ?

6. It may be mentioned that the Management has examined one witness and documents Exhibit M-1 has been tendered into evidence. The claimant herself appeared in the witness-box and documents Exhibit W-1 to W-4 have been tendered into evidence. After going through the evidence and hearing the representatives of both the sides, my findings on the above issues are as under :—

Issue No. 1—

7. The management has examined Mr. S. T. Hatiari, its Manager who deposed that the claimant served in their factory, but, she resigned from service of her own accord,—vide letter of resignation Exhibit M-1. He further stated that she signed this letter in his presence and that her resignation was accepted by him. He further stated that dues were not paid to the claimant because she demanded more money.

8. Smt. Sabita Adhikari has appeared as WW-1 and stated that the Union was formed by them in April, 1981 and that she was the Secretary of the said Union. She further stated that she was called by Mr. Sehgal, Proprietor of the company on 8th May, 1981, and that her signatures were obtained on the document Exhibit M-1 forcibly. She further stated that this document was not written in her presence, but, on the other hand, the same had already been written and that she informed the Union in that respect. She then stated that she was turned out from the factory on 13th May, 1981 and that the strike took place in the factory on 14th May, 1981. She further stated that she appeared in the Conciliation Office on 16th July, 1981 when settlement copy Exhibit W-1 took place and that thereafter gave the demand notice. She further stated that she was not working anywhere these days and that she tried to find out job, but in vain. The postal receipts of the telegram Exhibit W-2 and W-3 and copy of the telegram Exhibit W-4 have been proved by her.

9. A perusal of the above evidence would show that MW-1 Shri S. T. Hatiari, Manager of the respondent has deposed that the claimant resigned from service,—vide letter Exhibit M-1 which was accepted by him and that no amount was paid to the claimant because she demanded more money. In cross-examination, he stated that he did not know whether the resignation was written by the claimant herself or it was got written by her from any person. He further stated that he did not remember if this document was written in his presence. He then stated that it was signed by the claimant in his presence. He further stated that after seeing the record, he could reply, if any letter accepting the resignation of the claimant was written or not. He further stated that he did not know the details of the amount due to the claimant. He denied the suggestion that the resignation was obtained under threat. On the other hand, Smt. Sabita Adhikari WW-1 deposed that her signatures were obtained forcibly on the document Exhibit M-1 and that this document had already been written when she was called in the office and that she informed the union about it. Her version finds corroboration from the copy of the telegram Exhibit W-4 and postal receipts Exhibit W-2 and W-3, dated the 9th May, 1981, in which it was complained that the signatures of some workers were being taken by the Management under threat. Smt. Sabita Adhikari deposed that she was called in the office on 8th May, 1981 when her signatures were obtained forcibly. The telegram was sent by the Union 9th May, 1981 when the matter was reported to the union. The alleged resignation letter Exhibit M-1 is dated 10th May, 1981. Smt. Sabita Adhikari WW-1 stated in cross-examination she did not give any date below her signatures. Consequently, the testimony of Shri S. T. Hatiari (MW-1) regarding the alleged resignation Exhibit M-1 cannot be accepted because this document does not appear to be a genuine one inasmuch as it bears the date as 10th May, 1981 whereas Smt. Sabita Adhikari claimant WW-1 stated that her signatures were obtained on 8th May, 1981 forcibly and her report to the Union resulted in sending telegram on 9th May, 1981. Further, in conciliation proceedings, copy Exhibit W-1, the plea taken by the Union that the signatures of the workman were obtained under threat while the Management took the plea that the workman had tendered their resignation. This document also shows that the claimant took the plea in the conciliation proceedings as well that her signatures were obtained under threat. If the claimant had tendered her resignation of her own accord, she would not have reported the matter to the Union and would not have dragged the management in conciliation proceedings.

10. It was argued on behalf of the Management that in the claim statement no plea regarding the alleged threat was taken by the claimant and as such no evidence can be read in this respect. Reliance was placed on the ruling reported as **Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and another**, 1979 Lab. I. C. 1192, in which it is laid down that any party appearing before the Industrial Tribunal must make a claim and when there is burden upon it to prove or establish the facts. No specific plea, was taken in the claim-statement, but was taken in the rejoinder, when it was specifically averred that signatures of the claimant were taken under threat. Moreover, the plea of threat was taken by the claimant much earlier before filing the claim-statement when the telegram Exhibit W-4 was sent to the Union on 9th May, 1981. Further this plea of threat was also taken in the settlement Exhibit W-1. Consequently the plea was taken before framing the issues inasmuch as the Management took the plea that the claimant resigned of his own accord, while the claimant averred that her signatures were obtained under threat and thereafter issues were framed and evidence was led by both the parties. As such this ruling does not help the Management being distinguishable on facts.

11. It was argued on behalf of the workman that the services of the four workmen were terminated by the management, but, two workmen were allowed to join duty in the settlement Exhibit W-1 while two workmen including the claimant were not allowed to do so and as such action of the respondent was discriminatory. Reliance was placed on the ruling reported as **Iron and Metal Traders Pvt. Ltd. Bombay and others and M. S. Haskiel and others**, 1983-II-LLJ page 504 in which it is laid down that where some strikers were reinstated and few were singled out and were not taken back on duty, it amounted to discrimination. Second ruling is **Air India versus Netagesh Meerza and others**, 1981-Lab. I.C. 1313, in which it is laid down that Article 14 of the Constitution forbids hostile discrimination. As already mentioned above, the claimant did not tender her resignation of her own accord and on that ground alone, she is entitled to relief claimed for.

12. It was argued on behalf of the Management that the present dispute cannot be termed as an Industrial Dispute. The argument is without any force because even in the settlement Exhibit W-1, the management had agreed that the claimant can refer his dispute to the Government under the provisions of the Industrial Disputes Act, 1947.

13. In view of the above discussion, it is thus held that the respondent-management has failed to prove that the claimant resigned from service of her own accord. The issue is decided accordingly against the Management.

Issue No. 2—

14. In view of the finding given on issue No. 1, above, the claimant was entitled to notice pay and compensation under provisions of Section-25-F of the Industrial Disputes Act, 1947 because she did not tender her resignation of her own accord. No such amount was paid to her and the plea taken by MW-1 Shri S. T. Hatiari has that since the claimant demanded more amount, no amount was paid to her. This plea is without any force because if any employee refuses to receive the amount due, the same can be sent to the workman by money-order or by bank draft. The provisions of Section 25-F of the Industrial Disputes Act, 1947 have not been complied with in the present case. Under these circumstances, the termination of the services of the claimant was neither justified nor proper and as such she is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated, the 22nd January, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 91, dated, the 22nd January, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.